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8 RICHARD GRAHAM

9 **UNITED STATES DISTRICT COURT**
10 **CENTRAL DISTRICT OF CALIFORNIA**
11 **WESTERN DIVISION**

12
13 RICHARD GRAHAM

14
15 Plaintiffs,

16 vs.

17 SELECT PORTFOLIO
18 SERVICING, INC.; EQUIFAX
19 INFORMATION SERVICES, LLC;
20 EXPERIAN INFORMATION
21 SOLUTIONS, INC.; and DOES 1 to
22 10, inclusive,

23 Defendant.
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Case No.:

**COMPLAINT AND DEMAND
FOR JURY TRIAL**

Unlimited Civil Jurisdiction

INTRODUCTION

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2 1. Plaintiff Richard Graham (“Plaintiff”) brings this Complaint for Damages
3 against Defendants Select Portfolio Servicing, Inc. (“SPS”), Equifax Information
4 Services, LLC (“Equifax”), and Experian Information Solutions, Inc. (“Experian”).

5 2. Plaintiff brings this action for damages based upon Defendants’
6 violations of: (1) the Fair Credit Report Act (“FCRA”), 15 U.S.C. § 1681; and (2) the
7 California Consumer Credit Reporting Agencies Act (“CCCRA”), Cal. Civ. Code §
8 1785.25.

VENUE AND JURISDICTION

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10 3. This Court has original jurisdiction pursuant to 28 U.S.C. § 1332(a). The
11 matter in controversy, exclusive of interest and costs, exceeds the sum of value of \$
12 75,000.00, and is a class action in which at least one member of the class of plaintiffs
13 is a citizen of a State different from any Defendant.

14 4. Jurisdiction of this Court also arises pursuant to 15 U.S.C. § 1681(p),
15 which states that such actions may be brought and heard before “any appropriate
16 United States district court, without regard to the amount in controversy.” The Court
17 has jurisdiction over the state law claims pursuant to 15 U.S.C. § 1367.

18 5. Venue is proper pursuant to 28 U.S.C. § 1391(b)(2) as the events
19 described in this complaint took place within this district.

PARTIES

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21 6. Plaintiff, Richard Graham, is a natural person who resides in Simi Valley,
22 California. Plaintiff is a "consumer" as defined by the FCRA, 15 U.S.C. § 1681(a).
23 and by the CCCRAA, Cal. Civ. Code § 1785.3(b).

24 7. Defendant SELECT PORTFOLIO SERVICING, INC. (“SPS”) is and was,
25 at all relevant times stated herein, a corporation with its headquarters in Salt Lake City,
26 Utah, which engaged in the practice of furnishing consumer information to consumer
27 reporting agencies, and is therefore a “furnisher of information” as contemplated by 15
28

1 U.S.C. § 1681s-2(a) & (b) and Cal. Civ. Code § 1785.25(a). Defendant SPS is a “person”
2 as defined by the FCRA, Section 1681a(b), and Cal. Civ. Code § 1785.3(j).

3 10. Defendant EQUIFAX INFORMATION SERVICES LLC (hereinafter
4 “Equifax”) is a limited liability company with its principal place of business located in
5 Atlanta, Georgia. At all relevant times herein, Defendant, Equifax, was an entity
6 which, for monetary fees, dues, or on a cooperative nonprofit basis, regularly engaged
7 in whole or in part in the practice of assembling or evaluating consumer credit
8 information or other consumer information for the purpose of furnishing consumer
9 reports to third parties, and used some mean or facility of interstate commerce for the
10 purpose of preparing or furnishing consumer reports, and is therefore a “consumer
reporting agency” as defined by 15 U.S.C. § 1681a(f).

11 11. Defendant, EXPERIAN INFORMATION SOLUTIONS, INC.
12 (hereinafter “Experian”), is a national corporation with its principal place of business
13 located at 475 Anton Blvd., Costa Mesa, California, 92626. At all relevant times
14 herein, Defendant, Experian, was an entity which, for monetary fees, dues, or on a
15 cooperative nonprofit basis, regularly engaged in whole or in part in the practice of
16 assembling or evaluating consumer credit information or other consumer information
17 for the purpose of furnishing consumer reports to third parties, and used some mean or
18 facility of interstate commerce for the purpose of preparing or furnishing consumer
19 reports, and is therefore a “consumer reporting agency” as defined by 15 U.S.C. §
20 1681a(f).

21 12. Defendant acted through their agents, employees, officers, members,
22 directors, heirs, successors, assigns, principals, trustees, sureties, subrogees,
23 representatives and insurers.

24 13. Plaintiff is informed and believes and on that basis alleges that
25 Defendants are responsible for the acts, occurrences and transactions as officers,
26 directors or managing agents of Defendant, or as their agents, servants, employees,
27 and that each of them are legally liable to Plaintiffs, as set forth below.
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FACTUAL ALLEGATIONS COMMON TO ALL COUNTS

14. On October 7, 2009, Plaintiff filed for Chapter 13 Bankruptcy in the United States Bankruptcy Court for the Central District of California, Case. No. 1:09-BK-23258-VK

15. On February 27, 2013, Plaintiff filed a Motion to Abandon the Real Property located at 4730 East Craig Road, Nuit 1113, Las Vegas, NV 89115 in the Bankruptcy Court. The Bankruptcy Court granted Plaintiff's motion on March 25, 2013.

16. On April 2, 2015, Plaintiff obtained a discharge of all debts he had incurred prior to the filing of their bankruptcy petition.

17. Within the last two years, Plaintiff conducted a credit review with the three major credit reporting agencies, Experian, Equifax and Trans Union (collectively referred to as "credit reporting agencies" or "CRAs"), and discovered inaccuracies in their credit files. Plaintiff discovered that Defendant SPS was furnishing false and inaccurate information to Transunion, Experian and Equifax that Plaintiff still owed an outstanding deficiency balance of \$ 126,884.00 for the mortgage relating to the Real Property located at 4730 East Craig Road, Nuit 1113, Las Vegas, NV 89115. (hereinafter, "The Deficiency Balance").

18. The Deficiency Balance which SPS was reporting was incurred prior to the filing of Plaintiff's bankruptcy petition and was inaccurate because any personal liability for the deficiency balance was extinguished by virtue of Plaintiff's surrender and abandonment of the property and Plaintiff's discharge in his bankruptcy proceedings.

19. Subsequently, Plaintiff formally disputed the alleged debt with Equifax and Experian and Transunion several times.

1 20. Upon receipt of Plaintiff's disputes, Equifax, Experian and Transunion
2 sent automatic customer dispute verification forms ("ACDV's") informing SPS that
3 Plaintiff was disputing SPS's reporting of the deficiency balance.

4 21. Upon receipt of these ACDVs, SPS continued to furnish inaccurate
5 information about Plaintiff regarding the deficiency balance to Equifax and Experian.

6 22. Despite Plaintiff's exhaustive efforts to date to remove the erroneous
7 information reported by the Defendants, the Defendants have nonetheless repeatedly,
8 deliberately, willfully, intentionally, recklessly, and negligently failed to perform
9 reasonable investigations of the above disputes as required by the FCRA, have failed
10 to remove the inaccurate information, have failed to include accurate information,
11 have failed to report on the results of the reinvestigations and have continued to report
12 the derogatory information about Plaintiff.

13 23. As a result of Defendants' conduct, Plaintiff has suffered actual damages
14 and serious financial and pecuniary harm arising from monetary losses related to
15 credit denials, loss of use of funds, loss of credit and loan opportunities, excessive
16 and/or elevated interest rate and finance charges, out-of-pocket expenses including,
17 but not limited to, local or long distance telephone charges, postage, faxing and other
18 related costs, all of which will continue into the future to Plaintiff's great detriment
19 and loss.

20 24. As a result of Defendant's conduct, Plaintiff has suffered great physical,
21 emotional and mental pain and anguish, and Plaintiff will continue to suffer the same
22 for an indefinite time in the future, all to Plaintiff's great detriment and loss.

23 25. As a result of Defendants' conduct, Plaintiff has suffered actual damages
24 in the form of financial and dignitary harm arising from injury to their credit rating
25 and reputation, and Plaintiff will continue to suffer the same for an indefinite time in
26 the future, all to Plaintiff's real detriment and loss.
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1 26. As a result of Defendants' conduct, Plaintiff has suffered decreased credit
2 score as a result of the negative entry appearing on Plaintiff's credit file, preventing
3 them from being able to obtain credit.

4 **FIRST CAUSE OF ACTION**

5 **(Violations of the Fair Credit Reporting Act, 15 U.S.C. § 1681 *et seq.*)**

6 **(Against SPS)**

7 27. Plaintiff incorporates the foregoing paragraphs as though the same were
8 set forth at length herein.

9 28. The FCRA requires a furnisher such as SPS, after receiving notice from a
10 credit reporting agency that a consumer disputes information that is being reported by
11 that furnisher, to conduct an investigation with respect to the disputed information, to
12 review all relevant information, to report the results of the investigation to the credit
13 reporting agency, and, if the investigation reveals that the information is incomplete or
14 inaccurate, to report those results to all other credit reporting agencies to which the
15 furnisher has provided the inaccurate information.

16 29. Within the last two years, defendant SPS provided inaccurate information
17 to the credit reporting agencies.

18 30. Within the past two years, Plaintiff notified Experian, Equifax, and Trans
19 Union that his report concerning the SPS trade-line was inaccurate. Thereafter, the
20 credit reporting agencies notified SPS that Plaintiff was disputing the information SPS
21 had furnished to the credit reporting agencies.

22 32. SPS violated sections 1681n and 1681o of the FCRA by engaging in the
23 following conduct that violates 15 U.S.C. §s-2(b);

- 24 a. willfully and negligently failing to conduct an investigation of the
25 inaccurate information that Plaintiffs disputed;
26 b. willfully and negligently failing to review all relevant information
27 concerning Plaintiffs' account provided to SPS;
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- c. willfully and negligently failing to report the results of investigations to the relevant consumer reporting agencies;
- d. willfully and negligently failing to report the inaccurate status of the inaccurate information to all credit reporting agencies;
- e. willfully and negligently failing to properly participate, investigate and comply with the reinvestigations that were conducted by any and all credit reporting agencies concerning the inaccurate information disputed by Plaintiffs;
- f. willfully and negligently continuing to furnish and disseminate inaccurate and derogatory credit, account and other information concerning the Plaintiffs to credit reporting agencies;
- g. willfully and negligently continuing to furnish and disseminate inaccurate and derogatory credit, account and other information concerning Plaintiffs' account to credit reporting agencies; and
- h. willfully and negligently failing to comply with the requirements imposed on furnishers of information pursuant to 15 U.S.C. §1681s-2(b).

33. In attempting to collect the aforementioned alleged debt, SPS, by and through their agents and employees, violated the provisions of the Fair Credit Reporting Act by furnishing information on the Plaintiff to one or more consumer reporting agency although Defendant knew, or consciously avoided knowing, that the information was inaccurate; to wit, Defendant SPS continued to report that Plaintiff owed a deficiency balance when this debt was discharged by the bankruptcy court.

34. SPS's conduct was a direct and proximate cause, as well as a substantial factor, in causing the serious injuries, damages and harm to Plaintiff that are outlined more fully above, and as a result, Defendant are liable to compensate the Plaintiff for the full amount of statutory, actual and punitive damages, along with attorneys' fees and costs, as well as other such relief, permitted by 15 U.S.C. § 1681n.

SECOND CAUSE OF ACTION

(Violations of the Fair Credit Reporting Act, 15 U.S.C. § 1681 *et seq.*)

(Against Equifax and Experian)

35. Plaintiff incorporates the foregoing paragraphs as though the same were set forth at length herein.

36. The Fair Credit Reporting Act provides that if the completeness or accuracy of any item of information contained in a consumer's file at a consumer reporting agency is disputed by the consumer and the consumer notifies the agency directly of such dispute, the agency shall conduct a reasonable reinvestigation to determine whether the disputed information is inaccurate, or delete the item from the file within 30 days of receiving the consumer's dispute notice. 15 USC § 1681i(a)(1)(A).

37. The Act further requires the credit reporting agency, within 5 business days of receiving notice of the consumer's dispute, to provide notification of the dispute to the person who furnished the information in dispute and requires the credit reporting agency to "include all relevant information regarding the dispute that the agency received from the consumer." 15 USC § 1681i(a)(2) (A). In conducting its reinvestigation of disputed information in a consumer report, the credit reporting agency is required to "review and consider all relevant information submitted by the consumer."

38. Within the two years preceding the filing of this complaint, Plaintiff notified Equifax and Experian of an inaccuracy contained in its reports and asked them to correct the inaccuracy.

39. Equifax and Experian failed to conduct a reasonable reinvestigation of the inaccuracies that Plaintiff disputed.

40. Equifax and Experian failed to review and consider all relevant information submitted by Plaintiff.

1 41. Equifax and Experian failed to employ and follow reasonable procedures
2 to assure maximum possible accuracy of Plaintiff's credit report, information and file
3 in violation of 15 USC § 1681e(b).

4 42. As a result of the above-described violations of § 1681i and § 1681e(b),
5 Plaintiff has sustained damages, as outlined above.

6 43. Equifax and Experian's violations of the FCRA were willful and Plaintiff
7 is therefore entitled to also seek statutory and punitive damages.

8 **THIRD CAUSE OF ACTION**

9 **(Violations of the California Consumer Credit Reporting Agencies Act, California**
10 **Civil Code §§1785.25(a))**

11 **(Against SPS)**

12 44. Plaintiffs incorporate the foregoing paragraphs as though the same were
13 set forth at length herein.

14 45. California Civil Code § 1785.25(a) states that a "person shall not furnish
15 information on a specific transaction or experience to any consumer credit reporting
16 agency if the person knows or should know the information is incomplete or
inaccurate."

17 46. California Civil Code § 1785.25(b) states that a furnisher that determines
18 a report to a credit reporting agency is not accurate or complete shall promptly notify
19 the consumer reporting agency of that determination and provide corrections to the
20 consumer reporting agency that is necessary to make the information complete and
21 accurate.

22 47. California Civil Code § 1785.25(c) provides that if the completeness or
23 accuracy of any information on a specific transaction or experience provided to a
24 consumer reporting agency is disputed by the consumer, the furnisher may not
25 continue reporting the information unless it provides a notice to the consumer
26 reporting agency that the information is disputed by the consumer.

27 48. Defendant SPS negligently and willfully furnished information to the
28 credit reporting agencies it knew or should have known was inaccurate.

1 49. Based on these violations of Civil Code § 1785.25(a), Plaintiffs are
2 entitled to the remedies afforded by Civil Code § 1785.31, including actual damages,
3 attorney's fees, pain and suffering, injunctive relief, and punitive damages in an
4 amount not less than \$100 nor more than \$5,000, for each violation as the Court
5 deems proper.

6 **PRAYER FOR RELIEF**

7 WHEREFORE, Plaintiffs prays for judgment as follows:

8 50. an award of actual damages, in an amount to be determined at trial,
9 pursuant to *15 U.S.C § 1681(n)* and *Cal. Civ. Code § 1785.31(a)(2)(A)*;

10 51. an award of statutory damages of \$ 1,000.00 per willful violation of the
11 FCRA, pursuant to *15 U.S.C § 1681(n)*;

12 52. an award of punitive damages under *15 U.S.C § 1681(n)*;

13 53. an award of punitive damages of \$ 100.00 - \$ 5,000.00 per willful
14 violation of *Cal. Civ. Code § 1785.25(a)*;

15 54. an award of attorneys' fees and costs pursuant to *15 U.S.C § 1681(o)* and
16 *Cal. Civ. Code § 1785.31(d)*;

17 55. Providing such further relief as may be just and proper.

18 Dated: January 31, 2016

Respectfully submitted,

19 **MARTIN & BONTRAGER, APC**

20 /s/ G. Thomas Martin, III

21 G. Thomas Martin, III

22 Attorney for Plaintiffs
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